

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Case No. 11-cr-141 (PAM/SER)

Plaintiff,

v.

ORDER

(4) James Nathan Fry,

Defendant.

This matter is before the Court on the Government's Motion for Preliminary Order of Forfeiture. (Docket No. 554.) On October 8, 2013, this Court entered an Amended Order of Forfeiture (Docket No. 277) requiring Defendant James Nathan Fry ("Fry") to forfeit property and pay a \$41,119,998.00 forfeiture money judgment as part of his criminal sentence. Fry's forfeiture judgment was entered into the Treasury Offset Program ("TOP") database, which is a national program that captures government payments that would otherwise be made to a debtor and applies them to outstanding federal debts. In September 2017, the United States received notice that a TOP offset had occurred, offsetting \$1,860.00 in funds that would otherwise have been paid to Fry. These funds, less a \$15.00 transaction fee, are currently in the custody of the U.S. Marshals Service. The Government's motion seeks an order forfeiting the TOP offset as a substitute asset in partial satisfaction of Fry's forfeiture money judgment.

The Government has not been able to locate enough forfeitable property to satisfy Fry's judgment. The Government is entitled to forfeit any of the Defendant's assets as substitute property and apply the value of such forfeited substitute property in partial

satisfaction of the Defendant's money judgment. See, e.g., United States v. Smith, 656 F.3d 821, 827 (8th Cir. 2011) (section 853(p) should be broadly construed to allow the forfeiture of any property of the defendant).

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Government's Motion for Preliminary Order of Forfeiture (Docket No. 554) is **GRANTED**;
2. Defendant James Nathan Fry is ordered to forfeit a Treasury Offset payment in the amount of \$1,845.00 pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c) and 21 U.S.C. § 853(p);
3. The United States shall, pursuant to 21 U.S.C. § 853(n)(1), as incorporated by 28 U.S.C. § 2461(c), publish and give notice of this Order and its intent to dispose of the Treasury Offset payment in the amount of \$1,845.00 in such manner as the Attorney General may direct;
4. Following the Court's disposition of all petitions filed pursuant to 21 U.S.C. § 853(n)(2) or, if no petitions are filed, following the expiration of the time period specified within which to file such petitions, the United States shall have clear title to the Treasury Offset payment in the amount of \$1,845.00;

5. This Court retains jurisdiction to address any third party claim that may be asserted in these proceedings, to enter any further order necessary for the forfeiture and disposition of such property, and to order any other substitute assets forfeited to the United States up to the amount of the Order of Forfeiture.

Dated: November 6, 2018

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge